

0

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MELVIN DUKES,
Petitioner,
vs.
WARDEN CASH, et al.,
Respondents. } Case No. EDCV 11-1109-CJC (DTB)
} ORDER RE SUMMARY DISMISSAL
} OF ACTION

Petitioner, a California state prisoner currently incarcerated at California State Prison, County of Los Angeles, in Lancaster, California, purported to file a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. section 2241 herein on July 14, 2011.

The Court notes that petitioner has previously filed three habeas petitions, each of which has been dismissed for failure to state a claim. Petitioner's three prior habeas petitions alleged facts relating to the conditions of his confinement, rather than attacking petitioner's underlying judgment of conviction. Petitioner has now filed a fourth habeas petition in which he again appears to challenge the conditions of his confinement rather than his underlying judgment of conviction.

The Petition is handwritten, single spaced and difficult to comprehend. As best the Court can glean from the Petition, petitioner is claiming that respondents refuse

1 to send out his legal mail to the Court; that his legal mail has been held for 8 days; that
2 he has been refused access to the yard, refused permission to make a telephone call
3 and refused access to the law library; and that respondents refuse to answer a 602
4 appeal he recently filed. (Petition at 3-4.)

5 Claims such as these which are directed to the conditions of a petitioner's
6 confinement may not properly be asserted in a habeas petition, or as part of a habeas
7 petition. See 28 U.S.C. § 2254(a); see also *Preiser v. Rodriguez*, 411 U.S. 475, 498-
8 500, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). Rather, such claims must be asserted
9 in a separate civil rights action. The Court does have discretion to construe
10 petitioner's habeas petition as a civil rights complaint. See *Wilwording v. Swenson*,
11 404 U.S. 249, 251, 92 S. Ct. 407, 30 L. Ed. 2d 418 (1971); *Hansen v. May*, 502 F.2d
12 728, 729 (9th Cir. 1974). In this instance, however, the Court chooses not to exercise
13 such discretion, as petitioner has failed to make an adequate showing of indigency.
14 The Prison Litigation Reform Act of 1995 (Public Law 104-134, 110 Stat. 1321)
15 amended 28 U.S.C. § 1915 to provide, inter alia, that all prisoners who file civil
16 actions must pay the full amount of the filing fee and that any prisoner seeking to file
17 a complaint in a civil action without prepayment of fees must submit a completed
18 Declaration in Support of Request to Proceed In Forma Pauperis. In addition,
19 prisoners must submit a certified copy of their prison trust fund account statement for
20 the 6-month period immediately preceding the filing of his/her complaint, obtained
21 from the appropriate official of the prison at which the prisoner is confined. See 28
22 U.S.C. §§ 1915(a)(1)-(2), 1915(b)(1). Here, when petitioner submitted his Petition
23 for filing, he failed to submit a certified copy of his trust account statement for the last
24 six months.

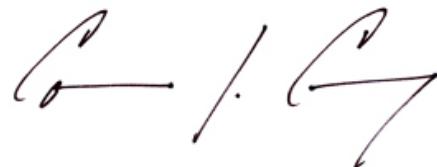
25 Moreover, as the current action was not submitted on a civil rights complaint
26 form, certain critical information, such as the capacity in which the defendants are
27 named, is lacking.

28 ///

1 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United
2 States District Courts, IT THEREFORE IS ORDERED that this action be summarily
3 dismissed without prejudice. The Clerk is directed to send petitioner a blank Central
4 District civil rights complaint form, which petitioner is encouraged to utilize should
5 he desire to pursue this action.

6 LET JUDGMENT BE ENTERED ACCORDINGLY.
7

8 DATED: July 27, 2011
9



10
11 CORMAC J. CARNEY
12 UNITED STATES DISTRICT JUDGE
13
14
15

16 Presented by:
17



18
19
20 David T. Bristow
21 United States Magistrate Judge
22
23
24
25
26
27
28